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TERRY E. BRANSTAD, GOVERNOR

IOWA UTILITIES BOARD  
DEPARTMENT OF COMMERCE

March 3, 1998

Acting Secretary  
Federal Communications Commission  
Room 222, 1919 M Street NW  
MS 1170  
Washington, DC 20554

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RE: Iowa Telecommunications and Technology Commission  
Petition for Waiver, CC Docket No. 96-45, AAD/USB File No. 98-370

Dear Secretary:

Enclosed for filing in the above docket are an original and six copies of the  
Comments of the Iowa Utilities Board on the above noted docket.

Please stamp one of the enclosed copies, and return it in the enclosed postage-paid  
envelope.

Sincerely,

*Diane Munns* *by kh*

Diane Munns  
General Counsel

Enclosures

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Iowa Utilities Board  
March 2, 1998

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Iowa Telecommunications and  
Technology Commission  
Petition for Waiver

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CC Docket No. 96-45  
AAD/USB File No. 98-37

COMMENTS  
OF THE IOWA UTILITIES BOARD

The Iowa Utilities Board (IUB) hereby submits the following comments in support of the Petition for Waiver, filed by the Iowa Telecommunications and Technology Commission on behalf of the Iowa Communications Network (ICN), Public Notice released February 13, 1998.

Summary

In the public notice, the FCC seeks comment on the Iowa Communications Network's (ICN) petition to be eligible for direct reimbursement from the universal service administrator as a provider of telecommunications services to schools, libraries, and rural health care providers. The Iowa Utilities Board (IUB) concurs with the ICN's position that the ICN should be considered a common carrier and eligible for direct reimbursement from the universal service fund for services it provides to schools, libraries, and rural health care facilities.

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The ICN is significantly different from other state networks that buy or lease facilities from underlying carriers and can thus obtain discounts for their ultimate school, library, and health provider customers. Thus, without a finding that the ICN is a telecommunications carrier, Iowa could be the only state whose educational and health systems could not receive the benefits of the congressionally mandated universal service fund.

The IUB concurs with request for an expedited decision so that Iowa's health and educational facilities can proceed with their applications.

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### **ICN Should Be Considered a Common Carrier**

The IUB concurs with the ICN's position that the ICN should be considered a common carrier and eligible for direct reimbursement for the USF for services it provides to schools, libraries, and rural health care facilities. The ICN holds itself out to all authorized end users. Iowa legislation defines authorized users of the state owned network to include: governmental agencies, private and public educational institutions, public and private health care institutions across the state, and public libraries<sup>1</sup>. The rates for services are from an established rate schedule and the ICN does not negotiate individually with any of its customers. This is consistent with the Commission's finding, "... precedent holds that a carrier may be a common carrier if it holds itself out 'to service indifferently all potential users.'<sup>2</sup>"

The ICN serves over 500 entities in 1,600 separate locations. This demonstrates that the ICN is serving more than a handful of select customers and is another reason the ICN should not be considered a private carrier.

The ICN should be considered a common carrier instead of a private carrier.

### **ICN is Unlike Other State Networks**

ICN is significantly different from other state networks that buy or lease facilities from underlying carriers and can thus obtain discounts on behalf of

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<sup>1</sup> IOWA CODE, Chapter 8B

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their ultimate school, library, and health provider customers. The ICN is a facilities-based network built and owned by the state, and it provides multi-point voice, data, and full-motion video service to public and private classrooms, public and private healthcare facilities, and governmental-related locations around Iowa.

In its Fourth Order on Reconsideration, the FCC concluded that, "a state telecommunications network only may secure such discounts on behalf of the schools and libraries it serves and pass through the discounts to those schools and libraries<sup>3</sup>." This method of procuring services may be applicable to other state telecommunications networks but is not applicable to the ICN since there are no underlying carriers. Thus, without a finding that the ICN is a telecommunications carrier, Iowa could be the only state whose educational and health systems could not receive the benefits of the congressionally mandated universal service fund.

### **There Should Be an Expedited Decision**

IUB concurs with request for an expedited decision so that Iowa's health and educational facilities can proceed with their applications. It is important that schools and libraries file their applications for support during the initial 75 day filing period

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<sup>2</sup> Fourth Order on Reconsideration, FCC 97-420, at paras.183. citing *Order*, 12 FCC Rcd at 9177-78, and *National Association of Regulatory Utility Commissioners V. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976)(NARUC II)

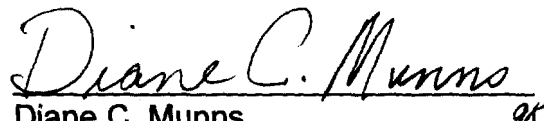
<sup>3</sup> Fourth Order on Reconsideration, FCC 97-420, at paras. 183.

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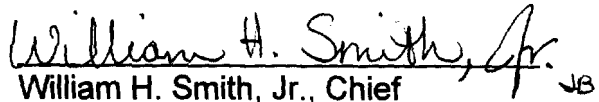
since those applications will be processed before later-filed applications. However, some may be unable to file their applications until the ICN's eligibility for direct reimbursement is established. Therefore, an expedited decision is important so eligible schools and libraries are not harmed because of late filings due to the indecision of the ICN's eligibility.

Respectfully submitted,



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